

ITEM: 8

SUBJECT: City of Merced, Wastewater Treatment Facility, Merced County – *Consideration of Administrative Civil Liability Order*

DISCUSSION: On 24 June 1994, the Board adopted WDRs Order No. 94-167 (NPDES Permit No. CA0079219) for the City of Merced allowing continued discharges of waste from the WWTF to Hartley Slough.

The City’s monitoring reports indicate that from 1 January 2000 to 30 June 2000 the City committed four serious violations of effluent limits specified in WDRs Order No. 94-167. The violations subject it to \$12,000 in Mandatory Minimum Penalties under Water Code Sections 13385(h)(1) and (i)(1). The serious violations were due to high effluent oil and grease concentrations. The City also accrued \$12,000 in Mandatory Minimum Penalties under Section 13385(i)(2) due to four chronic violations of its effluent limitations. The chronic violations include exceedances of total coliform, total suspended solids, and oil and grease limits. The total amount of mandatory penalties is \$24,000. The Executive Officer issued Administrative Civil Liability Complaint No. 5-00-520 on 14 September 2000 specifying payment of the \$24,000 in penalties.

The City had the option to pay the penalty and waive its right to a hearing by 10 October 2000. Also, in lieu of the mandatory penalty of \$3,000 for the first serious violation, the City had the opportunity to request that the

Executive Officer allow it to complete a pollution prevention plan or conduct a supplemental environmental project.

The City has not waived the hearing or asked for relief as described above. Instead, it is contesting the subject Order. The City contends that the proposed penalty associated with the serious violations is unwarranted as four violations are triggered by what the City characterizes as an improbable result from a single sample event. At issue is a high effluent oil and grease result from a 26 January 2000 grab sample. The City presented information intended to demonstrate that the 26 January 2000 effluent oil and grease sample result was erroneous. The City argues that the result is anomalous because it is higher than the influent oil and grease result and the effluent chemical oxygen demand (COD) result for the same date.

Staff evaluated the City's arguments. Due to the detention time of wastewater in the WWTF, grab influent and effluent results for oil and grease on a particular day are not expected to relate to one another. Further, the effluent sample collected for oil and grease analysis was a grab sample while the effluent sample collected for COD analysis was a composite sample. Grab and composite sample results may differ significantly even when the test method is the same. The evidence submitted by the City also included a letter from its contract lab stating that review of sample results did not reveal any obvious errors with the analysis. In short, the City's arguments are not convincing and in staff's judgment do not outweigh the actual evidence of

the 26 January 2000 analytical result. Staff, nevertheless, intend to consult with others on this and will apprise the Board at the hearing on whether consultation has altered the staff recommendation.

RECOMMENDATION: Adopt the proposed ACL Order for \$24,000.

Mgmt. Review

Legal Review
